



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	<b>04/24/03</b>	Bill No:	<b>SB 981</b>
Tax:	<b>Petroleum Pollution Cleanup and Prevention Fee</b>	Author:	<b>Soto and Romero</b>
Board Position:		Related Bills:	<b>AB 1500 (Diaz)</b>

***This analysis will only address the bill's provisions that impact the Board.***

### **BILL SUMMARY**

This bill would require every operator of a refinery to pay a fee in an amount equivalent to thirty cents (\$0.30) for each barrel of crude oil received at a refinery within the state that is used for the production of gasoline and diesel fuel and is consumed in the state. The fee would be used to fund district petroleum pollution source reduction programs, as specified, to the extent the district determines those revenues relate to the relative harm caused, or are intended to mitigate or prevent the relative harm created, by diesel and gasoline fuel in that district.

### **Summary of Amendments**

The amendments to this bill since the previous analysis impose the fee on the barrels of crude oil used for the production of gasoline and diesel fuel and consumed in the state. The previous version of the bill did not require that the gasoline and diesel fuel produced be consumed in California for purposes of imposing the fee.

### **ANALYSIS**

#### **Current Law**

The Board of Equalization currently collects two different fees on crude oil and petroleum products transported into, across, and/or through this state. These fees are the oil spill administration and prevention fee and the oil spill response fee.

Existing law, under Section 8670.40 of the Government Code, imposes an oil spill administration and prevention fee not to exceed \$0.04 per barrel upon every person owning crude oil at the time the crude oil is received at a marine terminal from within or outside the state, or upon owners of petroleum products received at a marine terminal from outside this state. In addition, every operator of a pipeline is liable for the fee for each barrel of crude oil originating from a production facility in marine waters and transported by means of a pipeline operating across, under, or through the marine waters of this state. The current rate is \$0.04 per barrel and the funds are used to

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implement oil spill prevention programs and finance environmental and economic studies relating to the effects of oil spills.

Existing law, under Section 8670.48 of the Government Code, imposes an oil spill response fee not exceeding \$0.25 per barrel on every person owning petroleum products at the time the petroleum products are received at a marine terminal in this state by means of a vessel from a point of origin outside this state. The fee is also imposed on an operator of a pipeline transporting petroleum products by means of a pipeline operating across, under, or through the marine waters of this state and an operator of a refinery receiving crude oil at a refinery in this state. This section further imposes the fee on every marine terminal operator transporting crude oil from within this state by means of a marine vessel and upon each pipeline operator for crude oil transported out of this state by pipeline. The fees are collected during any period that funds are required to meet the designated amounts for promptly responding to containment and cleanup of oil spills into marine waters. The Oil Spill Response Trust Fund reached its \$50 million maximum level in 1991-92, and no response fees have been collected since then.

### **Proposed Law**

This bill would add Division 29 (commencing with Section 38000) to the Public Resources Code as the Children's Health and Petroleum Pollution Remediation Act of 2003. Among its provisions, Section 38050 would require every operator of a refinery to pay a fee in an amount equivalent to \$0.30 for each barrel of crude oil received at a refinery within the state that is used for the production of gasoline and diesel fuel and consumed in the state.

The Board would administer the fee imposed in accordance with the Fee Collection Procedures Law, which contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The fee imposed would be due and payable to the Board monthly on or before the 25<sup>th</sup> day of the calendar month following the monthly period for which the fee is imposed. In addition, each fee payer, on or before the 25<sup>th</sup> day of the month following each monthly period, would be required to make out a return for the preceding monthly period.

Each fee payer would be required to include with the payment of the fee, information detailing the actual fuel production used in the calculation of the fee payment, including, but not limited to, a breakdown of amounts of diesel and gasoline fuels produced. A fee payer would be allowed to designate any portion of the fuel production information as trade secret information and that portion would not be released except to the state employees specifically designated by the Board. However, if the Board determines after investigation that the portion of the fuel production is not in fact a trade secret, such information could be released. Any state employee having access to the trade secret would be required to maintain its confidentiality. For purposes of Section 38050, "trade secret" would have the same meaning as described in Section 6254.7 of the Government Code. "Trade secrets," as used in Government Code Section 6254.7, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not

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patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

The fees paid to the Board would be transmitted to the Children's Health and Petroleum Pollution Remediation Trust Fund, which this bill would create. The monies deposited to the credit of the fund would be used to pay for refunds on overpayments of the fee and to pay for the administrative costs of the Board, with the balance to be allocated and expended as follows:

- On January 1 of each year, the State Air Resources Board would be required to provide a breakdown of each district's relative contribution to the state emissions inventory based on emission data compiled, as provided.
- As soon as practicable, but not later than March 1 of each year, the Controller would allocate moneys from the fund to each district in proportion to each district's share of the state emission inventory as determined by the State Air Resources Board.
- The moneys allocated to each district would be expended by the district to fund petroleum pollution source reduction programs, as specified, to the extent the district determines those revenues relate to the relative harm caused, or are intended to mitigate or prevent the relative harm created, by diesel and gasoline fuel in that district.

The Board would also be required to annually notify the Controller of the ratio of gasoline to diesel fuels, on an aggregate basis, of the fuels produced from crude oil that were subject to the fee.

The bill would become effective January 1, 2004.

### **Background**

In 1997, Assembly Bill 1368 (Villaraigosa) would have added Chapter 9 (commencing with Section 44275) to Part 5 of Division 26 of the Health and Safety Code as the California Air Quality and Energy Efficiency Program. Among other things, the Board would have been required to administer a \$0.30 per barrel fee on crude oil received at a refinery within this state through December 31, 2010. The provisions of that measure to establish the program and impose a fee were amended out on May 1, 1997.

In 2002, Assembly Bill 2682 (Chu) and Senate Bill 1994 (Soto) would have required every operator of a refinery to pay a fee of \$0.30 for each barrel of crude oil received at a refinery within the state. Among other things, the fee would have provided funding to a California Environmental Protection Agency-administered program for projects addressing petroleum-related contamination of groundwater, marine and terrestrial surface waters, soil, and drinking water supplies, and to the State Air Resources Board to provide funding to purchase new, lower emission school buses pursuant to guidelines adopted by the State Air Resources Board. Assembly Bill 2682 was held under

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submission in the Assembly Appropriations Committee, and Senate Bill 1994 failed passage out of the Senate Appropriations Committee.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the South Coast Air Quality Management District and is intended to fund "programs that mitigate the adverse air pollution-related health effects associated with the refining of crude oil and consumption of its principle products: gasoline and diesel fuel."
2. **Summary of April 24 amendments.** The amendments impose the fee on the barrels of crude oil used for the production of gasoline and diesel fuel and consumed in the state. The previous version of the bill did not require that the gasoline and diesel fuel produced be consumed in California.
3. **Summary of April 3 amendments.** The amendments modified the imposition of the fee to be "an amount equivalent to" \$0.30 for each barrel of crude oil received at a refinery and added a definition for the terms "gasoline" and "diesel fuel". Since a multitude of products, excluding gasoline and diesel fuel, are produced from a barrel of crude oil, such as kerosene, lubricating oils, heating oil, jet fuel, and hydrocarbon gases (chemical feed stocks), the amendments target the principle products of the pollution. The amendments would also require a fee payer to provide information detailing actual fuel production used in the calculation of the fee payment and for the Board to annually notify the Controller of the ratio of gasoline to diesel fuels of the fuels produced from crude oil.
4. **Suggested technical amendments.** The following technical amendments are suggested to clarify the intent of the measure:
  - The author may want to consider amending the definition of "gasoline" as provided in proposed Section 38001(g) to be consistent with the Motor Vehicle Fuel (Gas) Tax Law. Having a different definition for "gasoline" for purposes of the gas tax and the proposed fee could complicate refinery operator's records, which would likely lead to reporting errors. As such, the following language is suggested:

38001. (g) "Gasoline" means all products that are commonly known or sold as gasoline and that are ~~a volatile mixture of hydrocarbons, generally containing small amounts of additives,~~ suitable for use ~~as a fuel~~ in spark-ignition internal combustion engines.
  - Section 38050(e) should identify the period for the ratio of gasoline to diesel fuels notification, which would be required to be provided annually by the Board to the Controller. For example, would the ratio of gasoline to diesel fuels be for the period of January 1 to December 31? Also, a date by which the Board would be required to notify the Controller should be specified. When establishing a date, it should be noted that it takes approximately three months from the end of the report period to receive the last return, review returns, and verify reported amounts.

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- The term "equivalent", as provided in Section 38050(d)(1), should be defined in order to provide uniformity in determining the fee. The intent of the bill is to impose the fee on the amount of crude oil used for the production of gasoline and diesel fuel. However, a multitude of products, excluding gasoline and diesel fuel, are produced from a barrel of crude oil, such as kerosene, lubricating oils, heating oil, jet fuel, and hydrocarbon gases (chemical feed stocks). Therefore, a refinery operator would have to determine exactly how much crude oil was used to produce gasoline and diesel fuel, equivalent to barrels, to compute the fee. Since the language is ambiguous, refinery operators would most likely determine the amount of the fee using different methods. For example, the amount of crude oil used to produce gasoline or diesel fuel, equivalent to barrels, could be determined based on a percentage of gallons, or actual gallons, of crude oil used to produce gasoline and diesel fuel.
- The provision that would authorize a fee payer to designate any portion of the fuel production information as a trade secret should be removed from the bill. The purpose of this provision is to designate actual fuel production information as confidential. However, the Board would be administering the proposed fee in accordance with the Fee Collection Procedures Law, which already provides for strict confidentiality of any and all information obtained relating to the fee collected pursuant (R&TC Section 55381). As such, it is recommended that the bill be amended as follows:

38050. (d)(1) The fee imposed pursuant to subdivision (b) is due and payable to the State Board of Equalization monthly on or before the 25th day of the calendar month following the monthly period for which the fee is imposed. Each fee payer, on or before the 25th day of the month following each monthly period, shall prepare and file ~~make out a~~ return for the preceding monthly period with the State Board of Equalization, on in the forms prescribed by the State Board of Equalization. The return shall show the number of gallons of diesel fuel and gasoline produced from crude oil.

4. **Exported fuel.** This bill would impose a fee for each barrel of crude oil received at a refinery within the state that is used for the production of gasoline and diesel fuel and is consumed in this state. However, refinery operators may not know whether the gasoline and diesel fuel produced will be consumed in this state. For example, gasoline and diesel fuel is routinely exported out-of-state at points below the refinery in the distribution chain, such as the terminal rack or bulk plant. If fuel were exported at a point below the refinery, a refinery operator would probably not know that the fuel was exported for consumption outside the state and pay the fee on such fuel. Board staff is working with the author's office in drafting amendments to address this concern.
5. **Refinery fuel production.** This bill is intended to provide funding for grant programs that mitigate the adverse air pollution-related health effects associated with the refining of crude oil and the consumption of its principle products of gasoline and diesel fuel. This bill would fund the grant programs through the imposition of a fee on crude oil received at a refinery within the state that is used to produce

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gasoline and diesel fuel and consumed in this state. However, in addition to crude oil, products such as blendstocks and feedstocks (partially refined fuel) are also received at refineries and used to produce gasoline and diesel fuel. If partially refined fuel were imported to a refinery within the state, the fee would not be imposed although it would be used in the production of fuels deemed by this measure to cause damaging effects to public health.

6. **Identification of fee payers.** This bill would impose a specified fee upon every operator of a refinery for each barrel of crude oil received at a refinery within the state. Identifying these fee payers would not be problematic since every person who operates an oil refinery in this state is currently registered with the Board for purposes of the oil spill response fee.
7. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2004, which is in the middle of the state's fiscal year. In order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2003-04 budget.
8. **Related legislation.** This bill is similar to AB 1500 (Diaz) in that it imposes a fee upon every operator of a refinery for each barrel of crude oil received at a refinery within the state. Assembly Bill 1500, however, would impose a one dollar (\$1) fee per barrel of crude oil to provide funding to the following:
  - The California Environmental Protection Agency to fund projects that investigate or remediate petroleum-related contamination of soil, drinking water supplies, groundwater, or marine and terrestrial surface waters to the extent that they relate to harm caused, or are intended to mitigate or prevent the harm created, by petroleum products that are refined by a refinery.
  - The State Energy Resources Conservation and Development Commission for expenditure on petroleum consumption reduction and pollution prevention strategies.
  - The California Department of Transportation to fund the development of new, and expansion of existing, public transportation systems, construction of new, and improvement of existing, safe road access and facilities for bicycle transportation and pedestrians, and retrofit or replacement of existing petroleum fueled public transport buses and trains with clean, alternatively fueled engines.
  - Diesel emission reduction programs, including, but not limited to, the Carl Moyer Memorial Air Quality Standards Attainment Program, and the Lower-Emission School Bus Program administered by the State Air Resources Board.

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## **COST ESTIMATE**

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

## **REVENUE ESTIMATE**

### **Background, Methodology, and Assumptions**

Based on the California Energy Commission's statistics, 670 million barrels of crude oil were refined in California in 2002. According to information gathered from the Energy Information Administration (EIA) and the American Petroleum Institute (API), gasoline and diesel fuel produced from one barrel of crude oil amounted to an estimated 65% of the total product yield (gasoline (44%) and diesel (21%)).

Using the estimated 65% ratio, we can attribute an estimated 436 million barrels to gasoline and diesel yield ( $65\% \times 670$  million barrels = 436 million barrels). In 2001, gasoline and diesel consumption in California was about 17.5 billion gallons. In barrels, this equates to about 416 million ( $17.5$  billion gallons / 42 = 416 million barrels).

The bill would initiate a fee in the amount of \$0.30 for each barrel of crude oil received at a refinery within the state that is used for the production of gasoline and diesel fuel and consumed in this state. Had this fee been in effect in 2002, \$125 million would have been generated for the Children's Health and Petroleum Pollution Remediation Trust Fund ( $\$0.30 \times 416$  million barrels = \$125 million).

### **Revenue Summary**

This bill would generate about \$125 million annually for the Children's Health and Petroleum Pollution Remediation Trust Fund, that this bill would establish.

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